Date of decision: 12/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

1 Whether Reporters of Local Papers may be allowed to see the judgements?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgement?

4.Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5.Whether it is to be circulated to the Civil Judge?

JAHANGIR TEXTILE MILLS
vs
HP DAV.

Appearance:

MR BR GUPTA for Petitioner
SERVED for Respondent No. 1
MR AK CLERK for Respondent No. 2

Coram : MR.JUSTICE M.R.CALLA
Dt.12.2.1996.

ORAL JUDGEMENT

Heard learned counsel.

The respondent was an employee of the petitioner company. The respondent attained the age of 60 years on 29.12.1989 and accordingly he was retired by the management from the service

The respondent workman relying upon condition no.2 of the agreement inrelation to technical supervisory staff at the age of retirement raised industrial dispute that he should have been allowed to continue in service for further period of two years i.e. till he attains the age of 62 years. Condition No.2 of the aforesaid agreement dated 23.2.1973 duly signed by Ahmedabad Mills Owners and the Textile Labour Association is reproduced as under :

"2. That every employee of the Technical and Supervisory staff shall be made to retire by the management from the service on his completing the age of 60 years. He shall be served with a notice of retirement three months prior to his completing the age of 60 years. However, the employee concerned may be given an extension of service upto his completing the age of 62 years provided :

[i] That the employee of the Technical and Supervisory staff concerned is putting regular attendance in work. The criteria for regular attendance in work shall be his being present for 240 days in last 12 months.

[ii] And if he is otherwise found medically fit."

It is not disputed by the petitioner company at any stage that the respondent workman was the employee who fulfilled condition of putting the regular attendance in work as envisaged by the aforesaid condition no.2 and that he was otherwise also found to be medically fit. The Labour Court in its award dated 23.12.1993 has held that the respondent workman was entitled to continue in service upto the age of 62 years because he has admittedly fulfilled the requirement envisaged by condition no.2 of the agreement as aforesaid. This order of the Labour Court passed on 23.12.1993 was also upheld by the Appellate Court i.e. Industrial Court at Ahmedabad on 14.12.1994. Thus the Labour Court as well as the Industrial Court have concurrently taken the view in favour of the continuance of the respondent workman upto the age of 62 years on the basis of condition no.2 of the agreement.

Mr. Gupta has taken objection by way of filing the additional affidavit dated 5.2.1996 to the effect that BIFR in exercise of its powers under the Sick Industrial Companies (Special Provisions) Act, 1985 vide its order dated 16.3.1993 has concluded that the petitioner company is sick company u/s. 3 (i))o) of the Sick Industrial Companies (Special Provisions) Act, 1985, and therefore, no proceedings can be taken against the

petitioner company. The respondent workman has filed affidavit-in-reply dated 9.2.1996. Mr.Clerk has argued that this petition has been filed by the petitioner company and the respondent workman has not filed any recovery application. Mr.Clerk's argument is that there is no occasion for the petitioner company to raise this objection in this Special Civil Application and he has also argued that the Jahangir Textile Mills itself has not been declared as a sick unit. So far as this petition is concerned the argument of Mr.Gupta that the company has been declared a sick company is not relevant because it is the petition filed by the petitioner company itself wherein validity of the orders passed by the Labour Court and the Appellate Court on 23.12.1993 and 14.12.1994 respectively has to be examined and it is not the petition by the respondent workman to enforce any recovery against the petitioner company. As and when the respondent workman prefers any such recovery application on the basis of the impugned orders passed by the Labour Court and the Industrial Court on 23.12.1993 and 14.12.1994, it will be open for the petitioner company to raise such an objection with reference to the provision of B.I.F.R. Act claiming the petitioner company to be a sick unit. In this petition before this court, limited aspect is, to examine the correctness, validity and propriety of the order passed by the Labour Court and Industrial Court which are impugned by the petitioner company in this petition under Articles 226 and 227 of the Constitution of India.

Mr.B.R.Gupta, learned counsel for the petitioner has argued that the Labour Court and the Industrial Court have done violance to the provision contained in condition no.2 of the agreement. His contention is that even if the requirement mentioned in condition no.2 is fulfilled, the respondent company cannot be compelled to continue such employees beyond the age of 60 years and it is the exclusive discretion of the petitioner company as to whether such employees who satisfy all the requirements under condition no.2 should be continued upto the age of 62 years or not. He has argued that it is neither binding upon the petitioner company nor enforceable against it at the instance of any workman that in case he has fulfilled criteria of regular attendance and in case he is otherwise found to be medically fit he has to be continued upto 62 years of age. As against this Mr.Clerk has argued that in accordance with the agreement and the condition referred to hereinabove once the employee has fulfilled the requirements contained in condition no.2, he has to be continued upto the age of 62 years and in such matters once the requirements are fulfilled , the company has no choice.

I called upon Mr.Gupta, learned counsel for the petitioner company to show as to when more than one employees attain the age of 60 years and fulfil the aforesaid condition how

the company will choose one to retire at the age of 60 years itself and the others to continue upto the age of 62 years. Answer given by the learned counsel for the petitoiner is that it has factually not happened in any case and no such question has been pointed out. In my opinion, the question is not this as to whether the petitioner company has made such choice factually in given case or not. The question is as to whether it is open for the petitioner company to pick and choose amongst the similarly situated employees. The only guidance given in the agreed condition is criteria for regular attendance in work and otherwise found to be medically fit and except this there is no other guidance. In this view of the matter apart from the fact that the Labour Court and the Industrial Court have taken concurrent view I also find that unbridled power to pick and choose amongst the similarly situated employees cannot be continanced. The simple import of condition no.2 which can be easily comprehended is that after attaining the age of 60 years if the employee is otherwise medically fit and he fullfills criteria of regular attendance in work as envisaged or contemplated in the agreed condition no.2(i) itself he has to be continued upto the age of 62 years and the company cannot be allowed to favour one similarly situated employee with the extension upto 62 years and retire other similarly situated employees at the age of 60 years. Lest it would be a case of unfair labour practice which cannot be continanced. When any provision agreed or laid down is to be tested, its validity has to be decided on extreme example on proposition of law and the argument that in fact such thing has nver happened in past is no answer. The company may not have exercised discretion arbitrarily in past and the fact situation of relative comparable cases may not be available but the question is whether it is open for the petitioner company to act in such arbitrary manner in relation to the agreed condition no.2 or not and certainly the view cannot be taken so as to allow the petitioner company to take such inconsistent or arbitrary action at any time and for that purpose the grievance of the present respondent workman has been actually appreciated by the Labour Court as well as the Industrial Court and the Labour Court and the Industrial Court have rightly passed the order allowing the respondent workman with continuance for the a period of 2 years i.e. upto the time he attained the age of 62 years i.e. December, 1991 and hence the claim of the respondent workman decided by the Labour Court and upheld by the Industrial Court does not warrant any interference and the respondent workman has to be paid wages in accordance with law for the period of 2 years beyond 29.12.1989 with all other consequential benefits as if he had never been retired on 29.12.1989.

I do not find any basis to interfere with the impugned orders dated 23.12.1993 and 14.12.1994 and hence this Special Civil Application is dismissed. Rule is hereby discharged. No

order as to costs. Request, to stay the operation of this order made on behalf of Mr.Gupta is declined.
